



Judge Philip M. Frazier
Case Management Procedures

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Rule 16 Conferences

Attorneys must confer and submit a Joint Report of Parties prior to the scheduled conference. A form for use in that regard may be downloaded ([here](#)), and is also included as an attachment to the Local Rules. If the case is a class action, click ([here](#)) for the form. The report must be jointly submitted -- one report bearing the original signature of each attorney of record.

The conference will occur even though the joint report has been timely submitted. Absent a specific waiver by the Court, the conference will occur.

The Scheduling and Discovery Conference will be telephonic. Plaintiff is responsible for placing the call. Occasionally, an attorney will be present at the courthouse at the time the conference is scheduled. When that happens, counsel should simply come to my chambers and participate in that manner. The attorney who is most familiar with the case should participate.

The purpose of the Rule 16 Conference is twofold: (1) to identify and plan to deal with novel or difficult discovery issues; and (2) to schedule a settlement conference. Counsel should be prepared to discuss each at the conference.

In all but a very few cases, a settlement conference will be set well before discovery closes. During the scheduling conference, we will identify the least amount of discovery which is a necessary predicate to a successful settlement conference. Expert discovery, for example, is rarely necessary or useful prior to a settlement conference. Several cases have been so thoroughly investigated by both sides by the time suit is filed in federal court that no additional discovery is needed prior to a settlement conference. In those instances, a settlement conference will be set as soon as possible, many times within two weeks.

Discovery Disputes

Shortly after the case is at issue, counsel will receive my "Order Regarding Discovery." This order is self-explanatory. Motions to compel discovery are handled telephonically and without written motions or briefs. When a discovery dispute arises which the parties are unable to resolve informally, the party seeking discovery shall alert the appropriate law clerk assigned to the case and provide the law clerk with appropriate materials, which shall be emailed to my email depository for proposed documents. Letters from counsel containing arguments are neither helpful nor desired. I will normally rule on the dispute during the teleconference. In this manner, discovery disputes are regularly resolved within a week of occurrence.

Disputes which arise during depositions should be addressed immediately via a phone conference. My chambers' number is: (618) 439-7750.

The non-prevailing party in a discovery dispute will bear the cost of the conference call.

Settlement Conferences

As mentioned above, settlement conference dates are selected during the Rule 16 conference. Typically, settlement conferences are set at 9:00 a.m. Because it is impossible to gauge in advance how long a settlement conference will last, I try to keep the rest of the day open. Attorneys and parties attending the settlement conferences should do the same. There are few rules attending these conferences, but they are firm and will not be deviated from except in very unusual circumstances. They are:

- Lead counsel must attend.
- The parties must attend. A named individual defendant need not attend if covered by liability insurance. In that case, an insurance representative with full authority to negotiate and settle the case must be here. This is an area which causes trouble. Frequently, an insurance representative appears with authority to a certain dollar limit. Most of the time, that authority is insufficient to do the job. It then becomes necessary to track down by telephone the person who really has the authority so that negotiations can be completed. This is disruptive and inefficient. A good rule of thumb for defendants trying to select a proper representative is to bring a person who can agree to any sum demanded by plaintiff without resort to the telephone.
- In the event settlement authority delegated to any defense representative appearing at the settlement conference has been set by a committee and such authority may not be unilaterally exceeded in any amount by the representative designated to attend the settlement conference, then the entire committee must be fully identified in the defense settlement statement (name, position, work address for each member) AND the entire committee or a quorum thereof empowered to enter into any agreement to settle the case MUST attend the settlement conference. Failure to follow this directive may result in a re-scheduled settlement conference AND payment of attorney's fees, expenses and other costs incurred by any other party during preparation for the settlement conference and attendance at the conference. Additional sanctions, including default, may be appropriate.

Another problem arises in employment cases. Defendants should not bring anyone who had any relevant input in the employment decision(s) which gave rise to the underlying lawsuit. In some cases, due to the size of the defendant company, this is unavoidable. Where it can be avoided, however, it must be. A good rule of thumb is to leave behind anyone who might testify at trial concerning the reasons for the employment action taken. Corporate counsel are another group typically lacking objectivity. They are frequently consulted prior to employment actions and are part of that mix. Leave them at home if possible.

Municipalities, counties, and other public entities represented by boards are often sued in federal court. On many occasions, a quorum of a governing board has appeared at a settlement conference. This is good as long as Open Meetings Act laws are not violated. Counsel are urged to take appropriate precautions.

Settlement statements are not filed with the Clerk. The parties should send their settlement statements directly to Judge Frazier's chambers by facsimile: (618)439-6325 or attached to email sent to my depository for proposed documents (PMFpd@ilsd.uscourts.gov).

*If during preparation for a settlement conference a defendant determines that negotiations will be futile, then that defendant must contact my office immediately. Defendants who appear with nothing but nuisance money may find themselves paying the cost of plaintiff(s) and plaintiff(s)' attorneys to attend.

Click (here) for a copy of the [Settlement Statement of Attorney](#)